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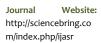












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# THE PRINCIPLE OF LEGALITY IN UZBEK AND GERMAN **CRIMINAL LAW: SOME ASPECTS**

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### ABSTRACT

The criminality, punishability of an act and other legal consequences of its commission are determined only by the Criminal Code. In the operation of the criminal law in time a necessary element is the determination of the moment of the commission of the crime and on the basis of the official doctrine, the time of the commission of a crime is determined depending on the type of composition of crimes. There is an exception to the general rule of the operation of the criminal law in time and consists in extending the operation of the criminal law to acts committed before its entry into force. According to § 8 of Criminal Code an offense is committed at the time when the principal or the participants acted, or, in the case of an omission, should have acted. The time when the result occurs is irrelevant. It is not determined which criminal law is applicable: "at the time of the commission of the crime", "at the time of the onset of these consequences" or "at the time of the resolution of the case". In our opinion in researching this topic we should collect and analyze legal studies of Germany, other developed European countries on a principle of legality, studying scientific doctrinal basis of the judicial position on principle of legality.

### **K**EYWORDS

The principle of legality, operation of the criminal law in time, nulla poena sine lege, non-retroactivity, retroactivity.

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### Introduction

The principle of legality is reflected in article 4 of the Criminal Code. The criminality, punishability of an act and other legal consequences of its commission are determined only by the Criminal Code.

Proper temporal application of the criminal law must necessarily comply with the following conditions: a) must be accurately established the period of validity of the law; b) must be determined the time of the crime. So, the criminality and punishability of an act is determined by the law in force at the time of its commission this rule is considered as a general formula for the time limits of the operation of criminal law. The application of the law requires the establishment of its compliance with the Constitution of the Republic of Uzbekistan and the Law of the Republic of Uzbekistan "On Normative Legal Acts". So, in accordance with Part 2 of Art. 16 of the Constitution "No law or other normative legal act can contradict the norms and principles of the Constitution". Normative legal acts must be published in official publications. No one can be convicted, punished, deprived of property or any rights on the basis of a law that has not been officially published. An important issue in enforcement of the law is the establishment of the moment of entry into force of a normative legal act and its termination.

In the operation of the criminal law in time a necessary element is the determination of the moment of the commission of the crime and on the basis of the official doctrine, the time of the commission of a crime is determined depending on the type of composition of crimes. In the material composition of crimes, the time of the commission of a crime is the time of the occurrence of socially dangerous consequences of criminal behavior (for example, the death of a person in a murder). In formal compositions, the time of the commission of a crime is the time of the commission of a criminal act, regardless of the consequences that have occurred (for example in the case of libel).

There is an exception to the general rule of the operation of the criminal law in time and consists in extending the operation of the criminal law to acts committed before its entry into force. A law that eliminates the criminality of an act, mitigates the punishment or otherwise improves the situation of a person has retroactive effect, i.e. it applies to persons who committed the relevant act before the entry into force of such a law, including persons who are serving or have served a sentence, but have a criminal record. A law that establishes the criminality of an act, increases the punishment or otherwise worsens the situation of a person does not have retroactive effect.

According to article 1 of the Criminal Code of the Republic of Uzbekistan "The criminal legislation of the Republic of Uzbekistan is based on the Constitution and generally recognized norms of international law and consists of this Code". If the criminal legislation consists of Criminal Code only

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and the criminality and punishability of an act is determined by the law in force at the time of its commission, what to do with with acts that affect the recognition of an action or inaction as a crime and the degree of its public danger i.e will be retroactive or non- retroactive provisions of regulatory legal acts that establish certain rules of conduct, the violation of which is recognized as criminal in criminal law norms with a blanket disposition in case of changes and additions to these provisions.

According 8 of Criminal Code (Strafgesetzbuch - StGB) an offense is committed at the time when the principal or the participants acted, or, in the case of an omission, should have acted. The time when the result occurs is irrelevant[1]. For example, the time of the infliction of grievous bodily harm, resulting in the death of the victim, by sending an explosive device in the postal parcel (§ 227 StGB) is considered the moment when the parcel is sent by the criminal by mail. When the parcel reached the addressee, when the bomb exploded, when the victim was injured and when he died from his injuries, it does not matter for establishing the time of the crime and, accordingly, does not affect the definition of the applicable criminal law. Any tightening of criminal legislation after the completion of the criminal's actions, in the above example, respectively, after sending the parcel by mail, is a tightening after the commission of a crime and is not taken into account when sentencing[2]. But in uzbek criminal law the time of the commission of a crime depends on the type of composition of crime and the time when the result occurs is important (in the material composition of crime). The recognition of the time of the commission of the crime as the time of the onset of the consequences-will allow, if a more strict law is adopted in the period between the end of the act and the onset of the consequences, to apply it to the subject. Moreover, in this case, it will be possible to bring to criminal responsibility for those acts that were not recognized as criminal at the time of their commission, as well as to bring to criminal responsibility persons who have not reached the age of criminal responsibility by the time of the commission of the act. This approach is contrary to the principle of justice and humanity.

According to article 4 of the Criminal Code of the Republic of Uzbekistan "The criminality. punishability of the act and other legal consequences of its commission are determined only by the Criminal Code". But according to article 13 "The criminality and punishability of an act is determined by the law in force at the time of its commission". It is not determined which criminal law is applicable: "at the time of the commission of the crime", "at the time of the onset of these consequences" or "at the time of the resolution of the case". (There is a rule in German Criminal code "Unless otherwise provided by law, measures of rehabilitation and incapacitation shall be determined according to the law in force at the time of the decision"[3]).

In our opinion in researching this topic we should collect and analyze legal studies of Germany, other developed European countries on a principle of legality, studying scientific doctrinal

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basis of the judicial position on principle of legality:

- sources of criminal law (legislature, judiciary, executive, scholars).
- concept and theoretical foundations of the principle of legality (theories that exist in support of the principle of legality). In Germany, the principle of legality instead is known as the principle of nulla poena sine lege, which is attributed not to Roman law, or canon law, as the use of Latin might suggest, but to the German criminal law scholar P.J.A. Feuerbach, who, in § 20 of his influential criminal law textbook, postulated not one, but three versions of the principle—nulla poena sine lege (no punishment without law), nulla poena sine crimine (no punishment without a crime), nullum crimen sine poena legali (no crime without a legal punishment[1, P.73].
- historical development of the principle of legality (in Roman and Medieval Law, in the period of Enlightenment, in the period First Codifications in the Western World, during Totalitarianism and after 1945).
- nonretroactivity(Riickwirkungsverbot[4], constitutional rules against "ex post facto laws", norms of criminal legislation), retroactivity (the German cases on retroactivity such as Border Guard Case, The Radbruch formula).
- time of commission of crime, time of commission of ongoing and continuing

- crimes, crimes with two actions, repeated crimes[5-18].
- time of commission of crimes committed in complicity(time of commission of crime in co-perpetratorship (Mittäterschaft), by instigators (Anstifter), aiders (Gehilfen)).

#### **KEFERENCES**

- 1. Dubber, Markus D., and Tatjana Hörnle, eds. The Oxford handbook of criminal law. OUP Oxford, 2014. - P.144
- 2. German Criminal Law. General part = Strafrecht. Allgemeiner Teil: trans. from german / Helmut Frister. - 5th ed. - M.: Infotropic Media, 2013 .-- 712 p.
- 3. Criminal Code in the version promulgated on 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] I p. 3322, last amended by Article 1 of the Law of 24 September 2013, Federal Law Gazette I p. 3671 and with the text of Article 6(18) of the Law of 10 October 2013, Federal Law Gazette 3799. p https://www.legislationline.org/downloa d/id/6115/file/Germany\_CC\_am2013\_en. pdf
- Modern German Criminal Law. M .: TK Vel-bi, Publishing house Prospect, 2006. 560 p.
- 5. Abzalova K. M. et al. Some matters of imposition of punishment for preparation for premeditated murder in the criminal code of the Republic of Uzbekistan //International Journal of Legal Studies (IJOLS). -2018. -T. 4.  $-N^{\circ}$ . 2. -C. 159-167.

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- Абзалова Х. ОБЩЕСОЦИАЛЬНЫЕ МЕРЫ 6. ПРЕДУПРЕЖДЕНИЯ ОПАСНОГО ДЛЯ ЖИЗНИ НАСИЛИЯ ПРОТИВ НЕСОВЕРШЕННОЛЕТНИХ В СЕМЬЕ В УСЛОВИЯХ ПАНДЕМИИ //Review of law sciences. - 2020. - №. 2. - C. 220-223.
- 7. Абзалова X. M. УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА УБИЙСТВО В ABECTE //Review of law sciences. - 2020. - Nº. 1. - C. 211-213.
- Абзалова Х. М. Особенности уголовной 8. ответственности за убийство в США и Узбекистан: Республике сравнительный анализ //Юридическая наука и правоохранительная практика. - 2019. - Nº. 4 (50). - C. 108-115.
- Allanova A. Aggravating circumstances of 9. illegal travel abroad or illegal entry into the Republic of Uzbekistan //Review of law sciences. – 2020. – T. 4. – №. 1. – C. 3.
- Алланова А. А. Жиноий равишда хомила **10.** туширганлик (аборт) жавобгарлик: қиёсий-хуқуқий таҳлил //журнал правовы<mark>х исследован</mark>ий. – 2022. – T. 7. – №. 1.
- 11. Алланова А. А. Хорижий давлатлар қонунчилигида жиноят жазони енгиллаштирувчи ва оғирлаштирувчи //ЖУРНАЛ ПРАВОВЫХ холатлар ИССЛЕДОВАНИЙ. - 2022. - №. SI-2.

- **12**. Turabaeva Ziyoda (2020). PREVENTION **PROPHYLAXIS** AND OF YOUTH DELINOUENCY AND PECULIARITIES OF IMPOSING PUNISHMENTS ON MINORS. Review of law sciences, 3 (Спецвыпуск), 233-239. doi: 10.24412/2181-919X-2020-3-233-239
- Turabaeva, Z. Y. (2022). Types and **13**. practice of application of coercive measures of educational influence. International Journal of Advance Scientific Research, 2(12), 27-33.
- Kurbanov M. General description of crimes 14. related to obstruction. unlawful business interference in activity //ProAcademy. - 2018. - T. 1. - №. 4. - C. 62-65.
- 15. Kurbanov M. Criminal-Legal Mechanisms For Protecting The Activities Of Business Entities In Uzbekistan //PSYCHOLOGY AND EDUCATION. - 2021. - T. 58. - №. 1. -C. 2123-2135.
- Mamajanov A. Foreign experience in **16**. solving the problem of limited sanity //International Journal of Pharmaceutical Research. - 2020. - T. 12. - №. 3.
- Mirabdullayevich M. A. Criminal liability of 17. persons with a mental disorder in Islamic law //Journal of law research. - 2020. - C. 209-215.

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